

The opinion in support of the decision being
entered today is not binding precedent of the Board.

Paper 14

Filed by: Trial Section Merits Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

HANS-JOCHEN LANG, ANDREAS WEICHERT, JAN-ROBERT SCHWARK,
WOLFGANG SCHOLZ, UDO ALBUS and PETER CRAUSE,

Junior Party,
(Patent 5,852,046),

v.

MASAHUMI KITANO, KASUHIRO NAKANO, HIDEKI YAGI,
NAOHITO OHASHI, ATSUYUKI KOJIMA, TSUYOSHI NOGUCHI,
and AKIRA MIYAGISHI,

Senior Party
(Application 08/544,292).

Patent Interference No. 104,487

Before: McKELVEY, Senior Administrative Patent Judge, and
SCHAFFER and LEE, Administrative Patent Judges.

McKELVEY, Senior Administrative Patent Judge.

JUDGMENT PURSUANT TO 37 CFR § 1.640

A telephone conference call was held on 15 March 2000, at
approximately 9:30 a.m. (0930 hours, Eastern Time), involving:

- (1) Bryan C. Diner, Esq., counsel for Lang;
- (2) Mark Boland, Esq., counsel for Kitano; and
- (3) Fred E. McKelvey, Senior Administrative Patent Judge.

A. Discussion

The purpose of the conference call was to set dates for taking action during the preliminary motion phase of the interference. Lang advised (Paper 13) that it did not plan to file any preliminary motion. During the conference call, Lang also advised that it did not intend to file a preliminary statement. It follows that on the record there is no basis upon which Lang can prevail and that a judgment should be entered at this time.

B. Judgment

Upon consideration of the record, including the discussion during the telephone conference call, it is

ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against junior party Hans-Jochen Lang, Andreas Weichert, Jan-Robert Schwark, Wolfgang Scholz, Udo Albus and Peter Crause.

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of senior party Masahumi Kitano,

Kasuhiko Nakano, Hideki Yagi, Naohito Ohashi, Atsuyuki Kojima, Tsuyoshi Noguchi and Akira Miyagishi.

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, senior party Masahumi Kitano, Kasuhiko Nakano, Hideki Yagi, Naohito Ohashi, Atsuyuki Kojima, Tsuyoshi Noguchi and Akira Miyagishi is entitled to a patent containing claims 1-35, 40-50 and 53-54 (corresponding to Count 1) of application 08/544,292, filed 17 October 1995.

FURTHER ORDERED that junior party Hans-Jochen Lang, Andreas Weichert, Jan-Robert Schwark, Wolfgang Scholz, Udo Albus and Peter Crause is not entitled to a patent containing claims 1-21 (corresponding to Count 1) of U.S. Patent 5,852,046, granted 22 December 1998, based on application 08/872,180, filed 10 June 1997.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

_____)
FRED E. McKELVEY, Senior)
Administrative Patent Judge)
)
)
_____)
RICHARD E. SCHAFER) BOARD OF PATENT

Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JAMESON LEE)	
Administrative Patent Judge)	

104,487

cc (via First Class Mail):

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